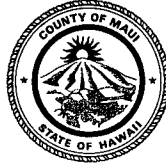


ALAN M. ARAKAWA
Mayor




PATRICK K. WONG
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7741
FACSIMILE: (808) 270-7152

January 18, 2013

MEMO TO: Honorable G. Riki Hokama, Chair
Policy and Intergovernmental Affairs Committee

FROM: Thomas Kolbe, Esq.
Deputy Corporation Counsel 

SUBJECT: **LITIGATION MATTERS (PIA-1)**
County of Maui v. Felicia Provencal,
Civil No. 12-1-0255(1)

OFFICE OF THE
COUNTY COUNCIL

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RECEIVED

Our Department respectfully requests the opportunity to discuss a recent settlement offer in the above-referenced matter. Please place this matter on the next committee meeting calendar.

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

Copies of the Complaint and the proposed Resolution are enclosed. We would also request that a representative of the Department of Finance be present to answer any questions that may arise.

Thank you for your anticipated assistance in this matter. Should you have any questions, please do not hesitate to contact me.

TKW:tll
Enclosures
cc: Danilo Agsalog, Director of Finance
Scott Teruya, Real Property Tax Administrator

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
COUNTY OF MAUI V. FELICIA PROVENCAL,
CIVIL NO. 12-1-0255(1)

WHEREAS, Plaintiff County of Maui filed a lawsuit in the Second Circuit Court on March 9, 2012, Civil No. 12-1-0255(1), against Felicia Provencal, claiming reimbursement of monies paid to Defendant for her failure to provide all services contracted; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this litigation for an amount to be disclosed in executive session; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

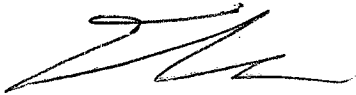
Resolution No. _____

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



THOMAS KOLBE
Deputy Corporation Counsel
County of Maui

S:\ALL\TWK\Collections\Provencal\Resolution_settlement.wpd

DEPARTMENT OF THE CORPORATION COUNSEL 205

PATRICK K. WONG 5878
Corporation Counsel
THOMAS KOLBE 7679
Deputy Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793
Telephone No. (808) 270-7740
Facsimile No. (808) 270-7152

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Attorneys for Plaintiff
COUNTY OF MAUI

FILED

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D. MORIOKA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

COUNTY OF MAUI,

Plaintiff,

vs.

FELICIA PROVENCAL; HAWAII DESIGN
MODELING; JOHN/JANE DOES 1-10;
DOE COMPANIES 1-10; DOE
PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; AND/OR OTHER
DOE ENTITIES 1-10,

Defendants.

CIVIL NO. 12-1-0255 (1)
(Contract)

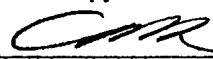
COMPLAINT; EXHIBITS "A"-
"D"; DEMAND FOR JURY TRIAL;
SUMMONS

COMPLAINT

Plaintiff COUNTY OF MAUI, by and through its attorneys,
PATRICK K. WONG, Corporation Counsel, and THOMAS KOLBE, Deputy
Corporation Counsel, and for cause of action against Defendants
above-named alleges and avers as follows:

1. Plaintiff COUNTY OF MAUI (hereinafter "COUNTY") is a
municipal corporation in the State of Hawaii.

I hereby certify that this is a full, true and
correct copy of the Original.


Clerk, Second Circuit Court

2. At all times relevant, Defendant FELICIA PROVENCAL (hereinafter "PROVENCAL") was a citizen and resident of the County of Maui, State of Hawaii.

3. At all times relevant, PROVENCAL held herself out as an independent contractor providing map conversion and AutoCAD services. Her principal place of business was in the County of Maui, State of Hawaii.

4. On information and belief, at all times relevant, PROVENCAL worked as an independent contractor providing map conversion and AutoCAD services doing business under the name HAWAII DESIGN MODELING (hereinafter "HDM"). HDM's principal place of business was in the County of Maui, State of Hawaii.

5. Venue is proper because all matters alleged herein occurred in the County of Maui, State of Hawaii, and are within the jurisdiction of the Second Circuit Court of the State of Hawaii.

5. On October 27, 2004, PROVENCAL (individually and/or as a contractor for HDM) submitted her "Work Proposal and Cost Estimate Tax Map Data Conversion Project" (hereinafter "Proposal 1") to the County of Maui Real Property Tax Division (a true and correct copy is attached as Exhibit A).

6. The purpose of this project was to convert hard copy plats to a digital format "for the purpose of ease of editing and updates, analysis, and dissemination of information to other county employees." Said Proposal 1 had three Phases: Phase I titled "Conversion" and "Physical Deliverables," involved the conversion of the plats to digital format. Phase II titled "Training"

involved the training of County staff on how to use the maps and the software applications used to produce the maps. Phase III, titled "Support," involved support services for County staff implementing the use of the digital maps and data sharing with other County departments.

7. On December 8, 2004, The Real Property Tax Department received approval to engage PROVENCAL's services as outlined in the Proposal. PROVENCAL was to be paid via partial payments over time against a Purchase Order (a true and correct copy is attached as Exhibit B, hereinafter "PO 145759"). Per the terms of the Proposal, the conversion process and training were supposed to be completed by December 31, 2006. Support services were to be provided through December 31, 2008.

9. On February 11, 2008, a second agreement (a true and correct copy of which is attached as Exhibit "C", hereinafter "Proposal 2") was reached between PROVENCAL and the COUNTY for updates to areas previously mapped at the rate of \$100.00/map. A second purchase order of \$20,000.00 was approved (a true and correct copy is attached as Exhibit D, hereinafter "PO 198506").

10. From January 5, 2005 to August 6, 2008, PROVENCAL submitted 55 invoices and was paid \$139,950 pursuant to Proposal 1.

11. Despite full payment of the agreed-upon contract price, PROVENCAL failed to timely deliver the 900 maps and completely failed to digitize more than 300 plats. Of the maps submitted by Defendant, more than 200 maps were incomplete and required

completion by the County. Further, said invoices were for Phase I services only and did not include training or support services, which were budgeted at \$40,000.

12. From June 30, 2008 to October 9, 2009, PROVENCAL submitted 6 invoices and was paid \$6,575 against PO 198506. Said invoices were for training, meetings, and updating of 9 maps.

Count 1 Breach of Contract

13. Defendant PROVENCAL's Proposal 1 (offer of services) was a contractual offer. The COUNTY accepted the offer through full performance of its contractual obligations (payment). Said offer and acceptance constituted an enforceable contract.

14. COUNTY's full payment of the agreed-upon contract price with timely payments upon receipt of invoices from Defendants PROVENCAL and/or HDM constitutes full performance of its obligations under the contract.

15. Defendants PROVENCAL and/or HDM's failure to provide the digitized maps, training, and support as described in the Proposal constitutes a failure to perform her obligations under the contract and is thus a breach of contract.

16. Defendants' failure to perform was a legal cause of COUNTY's damages which are of the nature and extent reasonably foreseeable by Defendants at the time the contract was entered into.

WHEREFORE, Plaintiff requests that this Court adjudge, decree, declare and enter judgment as follows:

A. That Plaintiff be awarded damages in the amount of NINETY THOUSAND DOLLARS (\$90,000.00), plus penalty fees and interest;

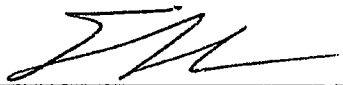
B. That Plaintiff be awarded its attorney's fees and costs of suit; and

C. For such other and further relief as this Court deems just and proper.

DATED: Wailuku, Maui, Hawaii, March 9, 2012.

PATRICK K. WONG
Corporation Counsel
Attorney for Defendant
COUNTY OF MAUI

By



THOMAS KOLBE
Deputy Corporation Counsel